

SECTION 3. VIOLATIONS -- HEARINGS -- ORDERS.

- (A) Whenever the Director has reason to believe that a violation of any provision of the Air Pollution Control Program has occurred, the Director may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision of the Act, rule or regulation, or order alleged to be violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless each person named therein requests in writing a hearing before the Director no later than thirty days after the date such order is served. Such hearing shall be conducted as provided under Section 3, Subsection (B). If the alleged violator wants a formal hearing according to the procedures for a contested case under Section 4, such person shall make the request in writing no later than 30 days after the date such order is served. In lieu of such order, the Director may require that the alleged violator appear before the Director at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (E) of this section not less than thirty days before the time set for the hearing.
- (B) The Director shall afford an opportunity for a fair hearing, and on the basis of the evidence produced at the hearing, the Director or hearing officer shall make findings of fact and conclusions of law and shall give written notice of such order to the alleged violator and to such other persons who appear at the hearing and make written request for notice of the order. If the hearing is held before any person other than the Director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the Director. The Director, prior to entering any order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the Director shall become final and binding on all parties unless appealed within thirty days after notice has been sent to the parties.
- (C) Whenever the Director finds that an air pollution emergency exists requiring immediate action to protect the public health and welfare, the Director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the Director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (B) of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the Director shall be afforded a hearing as soon as possible and not later than ten days after such application by such affected person. On the basis of such hearing, the Director shall continue such order in effect, revoke it, or modify it.
- (D) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the Director shall be served on any person affected thereby in a manner provided for service of a summons in a civil action. Proof of service shall be filed in the office of the department. Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

- (E) The hearings provided for in this section may be conducted by the Director or by any member of the department acting in his or her behalf, or the Director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the Director, together with findings of fact and conclusions of law made by the Director or hearing officer. Witnesses who are subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided by law. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under the provisions of this section, the district court shall have jurisdiction, upon application of the Director, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof. If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court therefore, furnish a certified transcript of the whole or any part of the stenographer's notes to any party to the action requiring and requesting the same.